

CHAPTER 437
MOTOR VEHICLE INDUSTRY LICENSING ACT

SECTION

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§437-1 Legislative findings and declaration. The legislature finds that the manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare and that the geographical location of Hawaii makes it necessary to insure the availability of motor vehicles and parts and dependable service therefor within the State to protect and preserve the transportation system and the investments of its residents. The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license motor vehicle dealers, salespersons, and auctions in the State, in order to prevent frauds, impositions, and other abuses against its residents and to protect and preserve the economy and the transportation system of the State.

§437-1.1 Definitions. As used in this chapter:

"Attachment hardware" means the components and associated fasteners that directly attach the bumper to the chassis frame.

"Auction" means any person engaged in the business of selling only motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in paragraph (1), (2), (4), or (5) in the definition of dealer, or any person auctioning motor vehicles incidental to an auction of other assets, when the auctioneer or person acts in the respective capacity described in this section.

"Board" means the motor vehicle industry licensing board created by this chapter.

"Business" includes any activities regularly engaged in by any person or regularly caused to be engaged in by the person for the object of gain, benefit, or advantage, either direct or indirect.

"Consumer" means any person who purchases, other than for purposes of resale, a motor vehicle for personal, family, household, or business use, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Credit sale contract" is defined as provided for in section 476-1.

"Dealer" includes "auction" as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. "New motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. "Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement;
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter;
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers wishing to purchase or lease motor vehicles. The consumer consultant shall register and pay a fee to the board prior to offering consultant services; or
- (7) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under their terms of a lease, or sold by it pursuant to a purchase option contained in a lease.

"Distributor" means any person, resident or nonresident, including a manufacturer, who in whole or in part imports, offers for sale, sells, or distributes new motor vehicles to dealers.

"Distributor branch" means any office or establishment maintained by a distributor which is not at the same address as the distributor and is used, either directly or indirectly, for the purpose of selling, offering for sale, promoting the sale of, or distributing new motor vehicles to dealers, or for the purpose of directing or supervising, in whole or in part, factory or distributor representatives.

"Distributor representative" means any representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by or under a contract with a distributor, directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor vehicles or for the purpose of supervising or regulating the business affairs of motor vehicle dealers or prospective dealers.

"Factory branch" means any office or establishment maintained by a manufacturer, directly or indirectly, for the purpose of selling, offering for sale, or promoting the sale of new motor vehicles to a

distributor or dealer, or for directing or supervising, in whole or in part, factory or distributor representatives.

"Factory representative" means a representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by a manufacturer or factory branch for the purpose of selling or promoting the sale of new motor vehicles of such manufacturer or for supervising the franchised dealers or prospective dealers of such manufacturer.

"Franchise" means any contract or agreement between a dealer and a manufacturer or distributor or branches or representatives thereof, which authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or parts therefor manufactured or distributed by such manufacturer or distributor.

"Impact speed" means the maximum speed of impact tested upon the bumper of the vehicle pursuant to Sections 581.6 and 581.7 of Part 581 of Title 49 of the Code of Federal Regulations.

"Manufacturer" means any person, resident or nonresident, who is engaged in the business of manufacturing or assembling new motor vehicles.

"Minor damage to the bumper and attachment hardware" means damage that can be repaired with the use of common repair materials and without replacing any parts. In addition, not later than thirty minutes after completion of each pendulum or barrier impact test, the bumper face bar shall have no permanent deviation greater than three-quarters of one inch from its original contour and position relative to the vehicle frame and no permanent deviation greater than three-eighths of one inch from its original contour on areas of contact with the barrier face or impact ridge of the pendulum test device, measured from a straight line connecting the bumper contours adjoining the contact area.

"Motor vehicle" includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.

"New motor vehicle" means a motor vehicle which (1) has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer's possession after the sale to a consumer, (2) has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer's possession after the sale to a consumer, and (3) has not been driven more than five hundred miles; provided that where a sale, registration, entitlement, or transfer of title of a motor vehicle, or the accrual of mileage thereon, is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.

"No damage" means that, when a passenger vehicle is subjected to impact testing conducted pursuant to the conditions and test procedures of Sections 581.6 and 581.7 of Part 581 of Title 49 of the Code of Federal Regulations, the vehicle sustains no damage to the body and safety systems.

"Passenger vehicle" includes any vehicle, motor vehicle, or truck designed for carrying twelve persons or fewer and subject to impact testing conducted pursuant to Part 581 of Title 49 of the Code of Federal Regulations.

"Premises" or "licensed premises" means the premises in connection with which a license has been, or is proposed to be, issued, including branch locations. The term "premises" or "license premises" is substituted for the term "place of business" wherever found in this chapter. "Retail", "sale at retail", "retail sale", and equivalent expressions, mean the act or attempted act of selling a motor vehicle to a person for use as a consumer.

"Sale", "selling", and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of, or interest in, a motor vehicle, including an option to purchase a motor vehicle.

"Salesperson" means any person who for gain or compensation of any kind, directly or indirectly, by any form of agreement or arrangement, sells, solicits, offers for sale, exchanges, or otherwise deals in, motor vehicles or any interest therein on behalf of any motor vehicle dealer.

"Treasurer" means the director of finance of each county.

"Used motor vehicle" means a motor vehicle other than a new motor vehicle.

"Wholesale" or "sale at wholesale" or "wholesale sale" and equivalent expressions, mean any sale other than a retail sale.

§437-2 Licenses. (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction or otherwise engage in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each branch location is approved by the board.

(c) A dealer's license issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of a salesperson without a license therefor, only for and in the business of the holder of the dealer's license and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed personal representative or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license.

(e) Notwithstanding any provisions of this chapter, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency.

§437-2.5 REPEALED.

§437-3 Prohibited acts for dealer or auction. No dealer or auction shall sell or bring or cause to be brought into this State for purposes of sale any new motor vehicle for which the dealer or auction is not franchised.

§437-3.5 Renumbered as §490:2-313.1.

§437-4 Advertising. (a) Motor vehicle, availability of. No new or used motor vehicle dealer shall advertise or offer for sale or exchange in any newspaper, or through any other medium, any motor vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer, or authorized new car distributor of such automobile at the time the advertisement or offer is made.

- (b) False, deceptive, or misleading advertising.
- (1) Terms that are false, deceptive, or misleading regarding pricing shall not be used in any retail motor vehicle advertising, including but not limited to the following terms:
 - (A) "Wholesale;"
 - (B) "Free;"
 - (C) "Invoice price," "manufacturer's invoice price," "factory invoice price," "dealer invoice price," a certain number of dollars "over invoice," or other terms of equivalent import;
 - (D) "Fleet," in connection with defining prices or a sale;
 - (E) "Factory sale," "manufacturer's sale," "factory authorized sale," "factory outlet," or other terms of equivalent import; and
 - (F) "No credit rejected," "everyone financed," or terms of equivalent import.
- (2) Any advertised product must be available on the stated terms from inventory, or by order with delivery within a reasonable period of time.
- (3) Where a discount or savings is featured, whether by price comparison of dollars, fractions, percentages, or otherwise, the discount or savings must be calculated with reference to the manufacturer's suggested retail price in accordance with the Monroney Act, 15 U.S.C. §1231, et. seq., as amended.
- (4) If the term "guarantee" or words of equivalent import are used in advertising, the guarantee, and all of its material terms, must be in writing and made part of the contract of sale of any motor vehicle sold by the seller during the period covered by the advertisement.
- (5) No motor vehicle shall be advertised or offered for sale or exchange or offered to be purchased under the representation that it is a new motor vehicle, unless the motor vehicle conforms to the definition of "new motor vehicle" contained in section 437-1.1.
- (c) Procedure relative to advertising of a specific motor vehicle.
 - (1) No new or used motor vehicle dealer shall advertise the sale of a specific motor vehicle without setting forth:
 - (A) The year;
 - (B) The make of the motor vehicle; and

- (C) In the case of a used car, the license plate number of the motor vehicle.
- (2) If a motor vehicle has been advertised as set forth above and has been sold, the motor vehicle dealer shall have in the dealer's office a copy of the retail sale contract or a copy of a bill of sale for the motor vehicle which shows the buyer's signature thereon.
- (3) No new or used motor vehicle dealer shall in any advertisement designate the price of a motor vehicle without stating the make, the body type, and the manufacturer's classification or series of the motor vehicle, except that the classification or series need not be designated for used cars, and whether or not other charges in addition to the quoted price will be assessed; provided that the gross income tax and transfer of title fees may be excluded from such other charges.
- (d) Display of motor vehicle at unlicensed premises. All dealers or salespersons shall obtain prior approval of the board, through its executive officer, to display motor vehicles for advertising purposes at or on any place other than the licensed premises.
- (e) Advertising by salesperson prohibited. No salesperson shall advertise the sale of a motor vehicle in or through any advertising medium without designating the name of the salesperson's employer; provided that this provision shall not apply when a salesperson advertises to dispose of a motor vehicle registered under the salesperson's name.

§437-4.5 Vehicle bumper impact notice. (a) Every manufacturer or distributor of new passenger vehicles for sale in this State shall affix to a window or the windshield of the vehicle a notice with either of the following statements, whichever is appropriate:

- (1) "THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT CONFORMS TO THE CURRENT FEDERAL BUMPER STANDARD OF _____ MILES PER HOUR, AND CAN WITHSTAND AN IMPACT SPEED SPECIFIED BY FEDERAL TESTS PROCEDURES WITH NO DAMAGE TO THE VEHICLE'S BODY AND SAFETY SYSTEMS. ALTHOUGH THE BUMPER AND ATTACHMENT HARDWARE MAY SUSTAIN DAMAGE, THE EXTENT OF THE DAMAGE MAY VARY."
- (2) "THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT EXCEEDS CURRENT FEDERAL BUMPER STANDARDS, AND CAN WITHSTAND A FRONTAL IMPACT SPEED OF _____ MILES PER HOUR AND A REAR IMPACT SPEED OF _____ MILES PER HOUR, AS SPECIFIED BY FEDERAL TEST PROCEDURES, WITH NO DAMAGE TO THE VEHICLE'S BODY AND SAFETY SYSTEMS. THE BUMPER AND ATTACHMENT HARDWARE MAY SUSTAIN MINOR DAMAGE, WHICH CAN BE REPAIRED WITH THE USE OF COMMON REPAIR MATERIALS AND WITHOUT REPLACING ANY PARTS."
- (b) The notice required by this section shall be printed legibly in English in bold typeface print and may be included in any notice or label required by federal law to be affixed to a window or windshield of the vehicle.

§437-5 Board. A motor vehicle industry licensing board is created and shall consist of seven members. Three of the members shall be engaged in the motor vehicle industry and four of the members shall be private citizens not connected with the industry.

§437-6 Powers and duties of the board. In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt, amend, and repeal from time to time rules not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business that is subject to this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules, when adopted under chapter 91, shall have the effect of law;
- (2) Grant, deny, suspend, or revoke licenses that are authorized by this chapter, fine licensees, and impose conditions as may be set forth in the rules of the board in connection with the granting of licenses;
- (3) Prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case;
- (4) Prescribe all forms to be used for the purposes of this chapter not otherwise provided for;
- (5) Establish, by rules, minimum qualifications for salespersons or dealers which must be met by applicants prior to the issuance of any license; and
- (6) The exercise by the board of power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in chapter 91 or in this chapter.

§437-7 Application for issuance or renewal of license. (a) Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided in this chapter.

(b) A person applying for a salesperson's license under this section shall be granted a temporary license by the executive officer of the board; provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met and the dealer files a statement that this person is employed by and under the supervision of the dealer. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of

commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board approves or denies the application for a permanent license.

(c) Requirements for financial reviews or financial statements shall be as follows:

(1) Applicants for the issuance of a dealer's or auction's license shall furnish the following financial review or financial statement to the board:

(A) An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business;

(B) An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership; and

(C) A corporate applicant shall submit a corporate financial review or financial statement;

(2) The board shall determine and prescribe the requirement of, form, and information required in financial reviews and financial statements for applicants for other licenses;

(3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant; and

(4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.

(d) Requirements for lines of credit shall be as follows:

(1) Applicants for issuance of a dealer's license shall obtain an inventory or flooring line of credit from a federally insured financial institution or from a financing source having a net worth of at least \$50,000,000. The line of credit shall be in the following amount:

(A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;

(B) For used motor vehicle dealer applicants, \$50,000; and

(C) For new and used motorcycle and motor scooter dealer applicants, \$50,000;

(2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit;

(3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution; and

(4) When an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, in an amount set forth in the board's rules, be obtained as an alternative form of security for the inventory or flooring line of credit.

(e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.

(f) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new salesperson's license shall be a lesser amount than the fee for other licenses issued under this chapter.

(g) Upon the filing of any application, a staff member shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the executive officer shall review a self-inspection report completed by the applicant and made a part of the application. The report shall include:

- (1) A statement that the applicant is not disqualified by this chapter from obtaining or exercising a license and has complied with all the requirements of this chapter relative to the making and filing of the licensee's application;
- (2) Information relating to any and all other matters and things which pertain to or affect the matter of the application or the issuance or the exercise of the license applied for;
- (3) In the case of an application for a dealer's or auction's license the applicant shall submit a report which shall include:
 - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
 - (B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and
- (4) In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative.

(h) After the filing of the application, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

(i) No dealer's or auction's license shall be issued under this chapter unless and until the applicant submits:

- (1) A description of the premises intended to become the licensed premises, the office facilities, equipment, and surrounding conditions;
- (2) A statement that the applicant has met the requirements under section 437-11;
- (3) A copy of a minimum one-year lease or rental agreement for the site the applicant has entered into; and
- (4) Photographs of the premises and facilities;

and the board is satisfied that the applicant has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

(j) Limitations on licenses shall be as follows:

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board endorsed on an amended map or plan; and
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a

salesperson, the license shall authorize the salesperson to be a salesperson only for the dealer named in the application for a license or an amended license.

(k) A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor.

(l) The executive officer may grant preliminary approval of a dealer or auction license application if all licensing requirements have been met. The board shall ratify all preliminary approvals.

§437-8 REPEALED.

§437-9 REPEALED.

§437-10 REPEALED.

§437-11 Additional requirements for dealer's and auction's license. (a) Requirements to be met before issuance of dealer's and auction's license.

(1) The following requirements shall be met by an applicant for a dealer's license before a license may be issued by the motor vehicle industry licensing board:

(A) The applicant has a site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;

(B) The site has a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average base of at least ninety inches; and

(C) The site has suitable sanitation facilities.

(2) The following requirements shall be met by an applicant for an auction's license before a license may be issued by the motor vehicle industry licensing board:

(A) The applicant has a permanent site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles; and

(B) The site has suitable sanitation facilities.

(b) Other related uses permissible. The site may be used for other purposes which are accessory or customarily associated with the retail sale of motor vehicles, such as maintenance operation of a repair, accessories, gasoline and oil, storage, parts, service, or paint branch or department.

§437-12 Legal ownership certificates. (a) Possession or proof of possession of legal ownership certificate. No dealer shall sell or advertise for sale a motor vehicle unless the dealer has in the dealer's possession or proof of possession of the legal ownership certificate of the subject motor vehicle.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the period as provided in section 286-52(b).

§437-13 Disclosure of dealer. Where a person licensed according to this chapter represents a buyer in the State in purchasing or attempting to purchase a motor vehicle from or through a dealer or broker not licensed in the State (hereinafter called "nonresident") residing or doing business without the State the person shall file with the motor vehicle industry licensing board each month a statement showing the name and address of all such nonresidents with whom the person has actually negotiated any such sale for the past month and with whom the person is authorized in writing to negotiate or continue to negotiate or to make such sales. All such statements shall be under oath.

§437-14 Delivery of contract required. In the event any person licensed according to this chapter represents a buyer in the State in purchasing or attempting to purchase a motor vehicle from or through a dealer or broker not licensed in the State (hereinafter called "nonresident") residing or doing business without the State the person shall deliver to the buyer upon execution, a copy of the contract or agreement covering such transaction which shall include the make, model, type, year, and price of the motor vehicle, the name and address of the nonresident through whom the sale or purchase is negotiated.

§437-15 Principals held responsible. Every holder of a license issued under this chapter may be held responsible for the conduct of the holder's agents and employees in all transactions regarding motor vehicles, motor vehicle parts, franchises, and transactions involving a subject or matter within the jurisdiction of the board. No licensee shall permit any person not licensed under this chapter to sell or exchange or offer to sell or exchange any motor vehicle on the premises specified in the license or to sell or exchange any motor vehicle on behalf of the licensee off the premises specified in the license.

§437-16 Records to be kept. Every motor vehicle dealer shall keep a record of the purchases, consignments, sales and exchanges, moneys, commissions, or any other thing of value paid or agreed to be paid to any person for each motor vehicle purchased, sold, consigned to be sold, or exchanged, and the record shall be at all times open to the inspection of the motor vehicle industry licensing board or any peace officer designated by the board to inspect the record. The record shall contain:

- (1) The names and addresses of all persons from whom any motor vehicle is purchased or received;
- (2) The names and addresses of all persons to whom any motor vehicle is sold, consigned to be sold, or exchanged;

- (3) The names and addresses of all persons who have received any moneys, commissions, or any other thing of value, or to whom the same is due and owing, in connection with the sale of any motor vehicle; and
- (4) The license number, motor number, serial number, and style of any such motor vehicle.

§437-17 REPEALED.

§437-18 Bond of broker. (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than \$200,000.

(b) More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section. If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall apply to the furnishing of the bond and the surety or sureties and the security thereof, with the substitution of the board hereunder or the awarding officer mentioned in sections 103-35 and 103-37 as appropriate.

(c) If the applicant maintains an established place of business in a county which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon, is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board, the excess over ten per cent of the bond may be waived without unduly jeopardizing the rights and interests of present and prospective claimants against the applicant, then the amount of the bond may be reduced at the discretion of the board.

- (d) The bond shall be subject to the following conditions:
- (1) That the broker will faithfully and truly comply with all the valid provisions of this chapter as the same now are or may hereafter be amended, and with any rule adopted by the board pursuant to this chapter;
 - (2) That the broker will not be guilty of fraud, misrepresentation, or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and will satisfy all judgments rendered against the broker based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle; and
 - (3) That the broker will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the broker.

(e) Suit on bond. The director of commerce and consumer affairs, or any person who has been or claims to have been injured by the breach of the conditions, shall have the right of action to recover on any such bond, plus a reasonable attorney's fee incurred to secure the recovery under the bond; provided that the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond; and provided further that any award of attorney's fees shall be approved by the court and no other attorney's fees shall be permitted from the bond proceeds. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the broker and any other person from being joined or consolidated with an action on the bond, and the recovery of a larger amount than the amount of the bond founded upon any other cause or causes or action so joined or consolidated.

§437-19 REPEALED.

§437-20 REPEALED.

§437-21 REPEALED.

§437-21.1 Bonds of auctions. The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor vehicle dealer in accordance with rules adopted by the motor vehicle industry licensing board.

§437-22 REPEALED.

§437-23 Term of license. (a) Expiration. All licenses issued pursuant to this chapter shall expire on June 30 of each even-numbered year unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each even-numbered year together with the applicable fees.

(b) Reapplication. If a licensee fails to renew the licensee's license on or before June 30 of each even-numbered year and desires to continue in the business or activity for which the license was issued, the licensee shall file a new application for a license and shall pay in addition to the license and filing fee a penalty of twenty-five per cent of the original license fee; provided that the board may for good cause waive the collection of all or a part of the penalty; and provided that nothing contained in this section shall limit the power of the board to deny any application on the grounds provided in this chapter.

NOTE:

1. *Biennial renewal of license commences July 1, 1976.*
2. *Biennial license commences July 1, 1976.*

3. *Notwithstanding any law or statute to the contrary, the original or initial permit, certificate or license issued by any board, commission, or the director of commerce and consumer affairs to any person shall be effective from the date of issuance to the expiration date of the biennial renewal period in which such permit, certificate, or license was originally issued. The fees to be paid by any person upon the issuance of the original or initial permit, certificate, or license shall be the fee as provided for in the applicable statutes or the rules and regulations of the board and one-half of the biennial renewal fee if application for such permit, certificate or license is made during the first year of the biennium; if application is made within the second year of the biennium, the fee shall be the original or initial fee as provided for by statutes or the rules and regulations of the board. (See secs. 35 and 37, Act 118, SH 1975).*

§437-24 Licenses terminate, when. (a) Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued.

(b) A salesperson's license shall terminate upon the termination of the license of the dealer by whom the salesperson is employed or upon the termination of the salesperson's employment.

(c) Upon the termination, suspension, or revocation of a license, the holder shall deliver it to the board.

(d) Where the termination is not the result of suspension or revocation by the board for cause, the board shall reissue the license to the holder without cost if the holder resumes the holder's business or employment within the term for which it was issued.

§437-25 Amended licenses. (a) Prior to entering the employ of a dealer, other than the one for which the salesperson's license was issued, a salesperson shall apply to the board for an amended license authorizing the new employment. Prior to moving or amending the premises or adding branch locations of a business for which a license was issued under this chapter, the holder shall apply for an amended license authorizing the change.

(b) The executive officer of the board is authorized to issue the amended license of a salesperson subject to the ratification by the board for the first three amendments to a license during the original term thereof. The board shall issue the fourth and following amendments to such license during the term of the original license. The executive officer may issue an amended license for new or amended premises or for additional branch locations of the business under a license subject to the board's ratification; provided that the executive officer may not issue an amended license when a prior amendment to the same license has not been acted upon by the board. Unless good cause exists, the amended license shall be freely issued for the remainder of the original term.

(c) The fees for amended licenses shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

§437-26 License not transferable; other requirements. (a) Nontransferable. No license issued under this chapter shall be transferable.

(b) License to be posted. Each dealer shall keep the license or a certified copy thereof posted in a conspicuous place on each premises.

(c) License on person. Each salesperson shall carry the salesperson's license on the salesperson's person or a certified copy thereof and shall exhibit such license or certified copy thereof upon demand by any person with whom the salesperson seeks to transact business as a motor vehicle salesperson.

437-27 Change of status, notice. If the status of any licensee changes during the period for which the license is issued in respect to:

- (1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesperson;
 - (2) The transfer of more than ten per cent of the ownership of the licensee to one person;
 - (3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or
 - (4) The assignment of any part of the licensee's assets for the benefit of creditors;
- the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter.

§437-27.5 Requirements to maintain license. A broker shall have and maintain in full force and effect a bond as required under section 437-18. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under section 437-18 is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

A licensee may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture.

§437-28 Suspension; revocation; fine; denial of issuance or renewal of a license. (a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;

- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
- (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
 - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
 - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
 - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1 regardless of the dollar amount of the transaction;
 - (E) Has engaged in any improper business conduct, including but not limited to employing, contracting with, or compensating consumer consultants; or
 - (F) Has sold or leased a new or used motor vehicle, other than at auction, without written documentation that contains the following provision printed legibly in at least fourteen point bold typeface print, upon which the salesperson or dealer shall appropriately indicate the type of sale, and upon which both the customer and salesperson or dealer shall place their initials in the designated spaces, prior to the signing of the contract of sale or lease:
 "This (IS) (IS NOT) a door-to-door sale. There (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this purchase.
 _____ Customer's Initials _____ Salesperson's or Dealer's Initials";
- (18) Being an applicant or holder of a dealer's license:
- (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
 - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;

- (19) Being an applicant or holder of an auction's license has sold or proposed to sell new motor vehicles without being franchised therefor; or
- (20) Being an applicant for a salesperson's license:
 - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; or
 - (B) Intends to be employed as a salesperson for more than one dealer.

(b) For disregard of an order suspending a license pursuant to section 436B-23, the board may summarily take possession of and impound all motor vehicles belonging to or in the possession of the licensee whether or not the vehicles are situated upon the licensed premises, pending final action in this case or, without taking possession of the motor vehicles, may render them unusable; provided that the right of the board to take any action and any liens for towing or storage or otherwise arising from the action are subject to and subordinate to any security interest that has attached to the motor vehicles prior thereto, and the board, prior to taking any action, shall give notice thereof to any secured party whose security interest in the motor vehicles is known to the board or who, prior to any action by the board, had filed a financing statement covering the motor vehicles or had noted the lien on the legal ownership certificates thereof.

(c) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 nor no more than \$1,000 for each violation.

(d) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle dealer to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine set forth in subsection (c).

§437-29 Discretionary powers of board. (a) Where any applicant for a license or stockholder owning more than a ten per cent interest in the applicant or any officer, director, trustee, employee, or partner of the applicant has been guilty of any act or omission involving personal misconduct which by this chapter is made ground for refusing to issue a license or for revoking or suspending a license, such as the making of a false statement of a material fact in an application, the commission of a fraudulent act in connection with the sale or negotiation for the purchase of motor vehicles, and the like, the board shall have discretion, nevertheless, to issue the license or suspend or reject the revocation of the license, upon such reasonable conditions, including the furnishing of an additional bond not exceeding \$5,000, as to future good conduct of the applicant and other person concerned, as the board determines, provided the board finds:

- (1) That there are extenuating circumstances that indicate that the act or omission was not due to moral turpitude; or
 - (2) That a reasonable time fixed by rule of the board, not less than one year, has elapsed since the act or omission occurred, together with evidence of the person's rehabilitation or general good character, sufficient to indicate that the person is not likely to repeat the offense or engage in illegal, unlawful, or unconscionable practices; or
 - (3) That the favorable action by the board will not jeopardize the public interest.
- (b) Notification of the application of each dealer or auction approved by the board, or a report of the suspension, revocation, or change of status of a dealer's or auction's license shall be

furnished to the affected county motor vehicle registration division or finance department promptly upon the granting, suspension, revocation, or change of status of the license.

§437-30 REPEALED.

§437-31 REPEALED.

§437-32 Credit sale contracts; agreements concerning, unlawful. No person who is engaged in, or about to engage in, the business of selling motor vehicles at retail shall enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of motor vehicles that the person will sell only to a designated person, or class of persons, all or any part of the credit sale contracts arising out of the sale by the person of motor vehicles, or that the person will refuse to sell such credit sale contracts to any designated person, or class of persons. Any such contract, agreement, or understanding is declared to be against the public policy of this State and to be unlawful and void.

§437-33 Coercion by manufacturer or distributor unlawful. No person, being a manufacturer or distributor of motor vehicles, or being an officer, agent, or representative of such manufacturer or distributor, shall induce or coerce, or attempt to induce or coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer to sell or refuse to sell all or any portion of the dealer's retail installment contracts to any person or class of persons designated by the manufacturer or distributor, by means of any statement, suggestion, promise, or threat, made directly or indirectly, that the manufacturer or distributor will in any manner injure or benefit such a dealer, or by means of any act of the manufacturer or distributor that has benefited or injured the dealer, or by means of any statement or representation, made directly or indirectly, that the dealer is under any obligation whatsoever to make or refuse to make such sale.

§437-34 Credit sale contracts, when purchase of unlawful. No person engaged in the business of buying credit sale contracts from motor vehicle dealers in this State, and no officer, agent, or representative of such person, shall purchase or attempt to purchase any such credit sale contract from any motor vehicle dealer in this State:

- (1) When the dealer in consequence of any contract, agreement, or arrangement between such person and a manufacturer or distributor supplying motor vehicles to the dealer has been induced or coerced to sell such credit sale contract by means of any statement, suggestion, promise, or threat, made, directly or indirectly, that the manufacturer or distributor supplying motor vehicles to the dealer would in any manner injure or benefit the dealer, or by means of any act of the manufacturer or distributor that has benefited

- or injured the dealer, or by means of any statement or representation, made, directly or indirectly, that the dealer is under any obligation whatsoever to make such sale;
- (2) When such person has received or has contracted to receive from any manufacturer or distributor supplying motor vehicles to the dealer, or has given or contracted to give to the manufacturer or distributor, any subsidy or thing of service or value, where the effect of the giving or receiving of such subsidy or thing of service or value may be to lessen or eliminate competition in the business of purchasing credit sale contracts from motor vehicle dealers or tend to grant an unfair trade advantage or to create a monopoly in such person.

§437-35 Penalty. Any person who violates any provision of this chapter or rules of the board, or who engages in the business as, or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall be fined not more than \$1,000 and each day's violation or failure to comply shall be deemed a separate offense.

§437-35.5 Misdemeanor. Any person who is convicted of violating any provision of this chapter or rules of the board, or who engages in the business as or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall have committed a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both.

§437-36 Injunction; damages. The motor vehicle industry licensing board or any person, firm, or corporation or any trade association may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by this chapter, and if injured thereby, for the recovery of damages. If in the suit the court finds that the defendant has violated or is violating any of the provisions of this chapter it may enjoin the defendant from further violation thereof. It shall not be necessary that actual damages to the plaintiff or petitioner be alleged or proved. Plaintiff or petitioner shall be entitled, if the plaintiff or petitioner procures a decree hereunder, to a reasonable attorney's fee to be allowed by the court.

§437-37 Credit sale contract violations; penalty. Whoever violates any of the provisions of sections 437-32 to 437-34 relating to sales or purchase of credit sale contracts shall be fined not less than \$25 nor more than \$1,000.

§437-37.5 Cumulative penalties. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§437-38 REPEALED.

§437-39 Enforcement. When necessary, the board may enforce this chapter, including any rule adopted thereunder or decision rendered thereunder by applying to the circuit court for any relief which may be appropriate, including injunctive relief. Further, the board may apply to the circuit court for any relief which may be appropriate including injunctive relief to enjoin any licensee or other person who violates or threatens to violate any provision of this chapter, including any rule adopted thereunder.

§437-40 Information in applications, confidential; penalty for divulging. The applications for license and contracts required by section 437-7 shall not be deemed a part of the public records but shall be confidential information for use of the treasurer and the motor vehicle industry licensing board. Whoever, except in a report to the treasurer or the board or when called on to testify in any court or proceeding, divulges any information contained in the applications and acquired by the official or employee in the official's or employee's capacity as an official or employee of the county treasurer's office or of the board shall be fined not less than \$50 nor more than \$100.

Provided that the treasurer or the board may permit the inspection of any such applications by any other person upon being satisfied that the inspection is desired for some lawful and proper purpose.

§437-41 Liberal interpretation. All provisions in this chapter shall be liberally interpreted to protect the public from fraud in the business of purchasing or selling motor vehicles and to protect the investments of its citizens in motor vehicles and dealerships and to protect the transportation system of the State and shall further be interpreted to affect existing as well as future franchise agreements.

§437-42 Sections 445-171 and 445-172 not to apply. Sections 445-171 and 445-172 do not apply to dealers and salespersons licensed under this chapter.

§437- New or used motor vehicle sales and lease contracts. Regardless of whether or not the buyer has taken possession of the motor vehicle, a new or used motor vehicle purchase or lease agreement by a salesperson or dealer shall be void if the agreement is contingent upon financing of the purchase and, pursuant to the financing or credit application signed at the time of purchase, the buyer is unable to qualify.